MIAMI REVIEW — MIAMI, FLORIDA

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1542

FRANCES OWEN WARRINER,
a/k/a FRANCES O. WARRINER,

Petitioner,

-vs-

MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO F. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC., and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ; and MORRIS FOX, and his wife, JEAN FOX; and TITLE GUARANTEE COMPANY OF BALTIMORE, MARYLAND, licensed and organized to do business in the State of Florida.

Respondents.

RESPONDENT'S BRIEF ON JURISDICTION
(MARILYN FERNANDEZ, an alleged free dealer, formerly known as MARILYN KAY THAL, a free dealer, and as the wife of PAUL GOODLEMAN; SAM BERGER, BEN GOULD, SIDNEY THAL, and MARIO R. FERNANDEZ, individually, and as Administratrix C.T.A. of the Estate of SAM KAY, and as the last officer and director of the dissolved Florida corporations LOAN STAR, INC. and PUBLIC INVESTMENT CORPORATION, INC.; and MARIO R. FERNANDEZ individually and as the husband of MARILYN FERNANDEZ).

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STATEMENT OF THE CASE

The Supreme Court of Florida concluded that it had no jurisdiction in this matter and accordingly, this Petition for Writ of Certiorari is of necessity directed to the opinion of the District Court of Appeals, which Petitioner is estopped from pursuing this litigation by the following 25 years of adverse rulings:

1. *Fink v. Warriner*, a state foreclosure action filed in Monroe County, Florida on October 26, 1950, Case No. 12516, which resulted in a decision adverse to this petitioner, a conclusion which was appealed to the Supreme Court of Florida and dismissed by that Court on January 21, 1952.

2. *Warriner v. Fink*, Circuit Court of Monroe County, Florida, Case No. 12-1172, complaint for bill of review of the above case, which subsequently dismissed by the Supreme Court of Florida in 1953. 62 So.2d 913.

3. *Warriner v. Fink*, Circuit Court of Monroe County, Florida, Case No. 14-1187, complaint for bill of review, which was dismissed by the Circuit Court March 5, 1958. An appeal was taken to the Third District Court of Appeal and was quashed October 21, 1958. Rehearing was denied April 20, 1959. The order of the Third District Court of Appeal was taken to the Supreme Court of Florida Case No. 23395 and was dismissed by that Court on October 7, 1959.

4. *Warriner v. Fink*, filed in District Court for the Southern District of Florida, Case No. 10-395, seeking to upset the decree entered in the case set forth in paragraph

2, above. This action was dismissed by the United States District Court on February 28, 1961. An appeal was taken to the United States Court of Appeals and the Order of Dismissal was affirmed and is reported in 307 F.2d 933. Certiorari was denied by the Supreme Court of the United States, 372 U.S. 943.

5. *Warriner v. Fink*, Case No. 63-611 filed in the United States District Court for the Southern District of Florida. This action was dismissed by the United States District Court in March 1964.

6. *Fernandez v. Warriner*, a case filed in the Circuit Court of Monroe County, Florida to quiet title and for an injunction, in which the Defendant in that action, Petitioner here, filed a counterclaim predicated upon the same claims as litigated in the actions set out in paragraphs 1 through 5 above. A final order quieting the title of respondent, MARILYN FERNANDEZ, and dismissing petitioner's counterclaim was entered May 19, 1967. This order was appealed in Florida's Third District Court of Appeal and affirmed on May 21, 1968, 213 So.2d 328. A petition for rehearing was denied August 22, 1968. Petition for Certiorari was denied by the Supreme Court of Florida in March 1969, rehearing denied May 2, 1969, 225 So.2d 524. A Petition for Certiorari was filed in the Supreme Court of the United States on October 17, 1969, which was denied on January 17, 1970. Rehearing was denied on March 30, 1970.

7. *Warriner v. Fernandez*, the case Petitioner is now attempting to bring before this court, was filed as Case No. 74-137 in the Circuit Court of Monroe County, Florida to quiet title on the same parcel of land involved in the pre-

viously outlined cases. The complaint was dismissed by the Circuit Court on November 21, 1973. Appeal was taken to the Third District Court of Appeal, which concluded on February 25, 1975 that the petitioner was estopped from bringing the action because of the above outlined prior litigation in which all issues were eventually disposed of. 310 So.2d 375. The Florida Supreme Court denied a Petition for Writ of Certiorari on October 30, 1975 for lack of jurisdiction, rehearing denied January 28, 1976. 325 So.2d 5.

Now the Petitioner is seeking a Writ of Certiorari from the United States Supreme Court, this being the third attempt to get before this forum.

JURISDICTION

The petitioner claims jurisdiction over this cause via 28 U.S.C. 1254(1) and 28 U.S.C. 1257(3). 28 U.S.C. 1254 refers to certiorari from cases in the federal courts of appeals and is clearly not applicable to this cause.

The only cognizable claim under which petitioner could seek jurisdiction under 28 U.S.C. 1257(3) is for violation of procedural due process.

The cases outlined above speak for themselves. This petitioner has been a party to seven entirely separate law suits in which she has been noticed and heard and which have litigated each and every issue involved in her claim.

CONCLUSION

On the above basis, Respondent requests the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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BY:_____
IRVING WEINSOFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that 2 printed copies of the Respondent's (MARILYN FERNANDEZ, etc. and MARIO R. FERNANDEZ, etc.) Brief on Jurisdiction was mailed to FRANCES OWEN WARRINER, 2735 S.W. 10th Terrace, Apt. #3, Miami, Florida 33135, and KENNETH L. RYSKAMP, BOLLES, GOODWIN, RYSKAMP & WELCHER, P.A., 401 City National Bank Building, Miami, Florida 33130, Attorneys for Respondents, Fox and Title Guarantee Company of Maryland .

IRVING WEINSOFF